

APPENDIX

The sections of the Public Utility Holding Company Act of 1935 (c. 687, 49 Stat. 803, 15 U. S. C. 79a *et seq.*) which are pertinent in the consideration of this case provide as follows:

SEC. 12. * * *

(e) It shall be unlawful for any registered holding company or any subsidiary company thereof, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, to declare or pay any dividend on any security of such company or to acquire, retire, or redeem any security of such company, in contravention of such rules and regulations or orders as the Commission deems necessary or appropriate to protect the financial integrity of companies in holding-company systems, to safeguard the working capital of public-utility companies, to prevent the payment of dividends out of capital or unearned surplus, or to prevent the circumvention of the provisions of this title or the rules, regulations, or orders thereunder.

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SEC. 24. (a) Any person or party aggrieved by an order issued by the Commission under this title may obtain a review of such order in the circuit court of appeals of the United States within any circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the

District of Columbia, by filing in such court, within sixty days after the entry of such order, a written petition praying that the order of the Commission be modified or set aside in whole or in part. A copy of such petition shall be forthwith served upon any member of the Commission, or upon any officer thereof designated by the Commission for that purpose, and thereupon the Commission shall certify and file in the court a transcript of the record upon which the order complained of was entered. Upon the filing of such transcript such court shall have exclusive jurisdiction to affirm, modify, or set aside such order, in whole or in part. No objection to the order of the Commission shall be considered by the court unless such objection shall have been urged before the Commission or unless there were reasonable grounds for failure so to do. The findings of the Commission as to the facts, if supported by substantial evidence, shall be conclusive. If application is made to the court for leave to adduce additional evidence, and it is shown to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the proceeding before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Commission may modify its findings as to the facts by reason of the additional evidence so taken, and it shall file with the court such modified or new findings, which, if supported by substantial evidence, shall

be conclusive, and its recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court affirming, modifying, or setting aside, in whole or in part, any such order of the Commission shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347).

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SEC. 25. The District Courts of the United States, the Supreme Court of the District of Columbia, and the United States courts of any Territory or other place subject to the jurisdiction of the United States shall have jurisdiction of violations of this title or the rules, regulations, or orders thereunder, and, concurrently with State and Territorial courts, of all suits in equity and actions at law brought to enforce any liability or duty created by, or to enjoin any violation of, this title or the rules, regulations, or orders thereunder. Any criminal proceeding may be brought in the district wherein any act or transaction constituting the violation occurred. Any suit or action to enforce any liability or duty created by, or to enjoin any violation of, this title or rules, regulations, or orders thereunder, may be brought in any such district or in the district wherein the defendant is an inhabitant or transacts business, and process in such cases may be served in any district of which the defendant is an inhabitant or transacts business or wherever the defendant may be found. Judgments and decrees so rendered shall be subject to review as provided in sections 128 and 240 of the Ju-

dicial Code, as amended (U. S. C., title 28, secs. 225 and 347), and section 7, as amended, of the Act entitled "An Act to establish a court of appeals for the District of Columbia", approved February 9, 1893 (D. C. Code, title 18, sec. 26). No costs shall be assessed for or against the Commission in any proceeding under this title brought by or against the Commission in any court.

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Rule U-42, promulgated pursuant to Section 12 (e) by the Commission, provides in pertinent part, as follows:

Rule U-42. Acquisition, Retirement, and Redemption of Securities by the Issuer Thereof.

(a) *General provisions.*—No registered holding company or subsidiary thereof shall acquire, retire or redeem any security of which it is the issuer (or which it has assumed or guaranteed) except pursuant to a declaration notifying the Commission of the proposed transaction, which has become effective in accordance with the procedure specified in rule U-23, and pursuant to the order of the Commission with respect to such declaration under the applicable provisions of the Act.

Rule U-23, referred to in Rule U-42, reads as follows:

Rule U-23. Procedure Applicable to Certain Applications and Declarations.

(a) *Scope of rule.*—The provisions of this rule apply to applications under sections 6 (b), 9 (c) (3) and 10 of the Act or rule U-50 and declarations pursuant to sections 7, 12 (b), 12 (c), 12 (d) and 12 (f) of the Act and any rule of the Commission

thereunder, to declarations under rule U-65, and to declarations regarding proposed accounting entries subject to instruction 8C of the Uniform System of Accounts for Public Utility Holding Companies.

(b) *Designation of filings as applications or declarations.*—Any filing as to any matter specified in paragraph (a) shall be designated an application, if filed pursuant to section 6 (b), 9 (c) (3) or 10 of the Act or rule U-50, and shall be designated a declaration with respect to any other matter specified in paragraph (a).

(c) *Effective date.*—A declaration or application will become effective or be granted respectively by order issuing as of course at 4:30 p. m., E. S. T. (or 1:00 p. m., if a Saturday) on the thirtieth day after the filing thereof or the fifteenth day after the filing of the last amendment thereto, whichever is later, or if such day be a Sunday or a legal holiday, on the next business day, unless prior thereto the Commission shall have ordered a hearing thereon. The Commission may at the request of the applicant or declarant advance, and the applicant or declarant may by written or telegraphic notice to the Commission postpone, such date.

(d) *Effect of order for hearing.*—If the Commission deems that a hearing is appropriate in the public interest or the interest of investors or consumers, it will issue an order for hearing thereon, and in that event a declaration or application shall not become effective or be granted except pursuant to further order of the Commission.

(e) *Notice of filing.*—The Commission will publish in the Federal Register notice of the filing of a declaration or application,

stating the earliest date upon which such declaration or application, as filed or as amended, may be permitted to become effective or be granted. Any interested person may, not later than fifteen days after the publication of such notice or such other date as may be fixed therein, request the Commission in writing that a hearing be held, stating his reasons therefor and the nature of his interest.